

**BEFORE THE COUNTY COUNCIL FOR MONTGOMERY COUNTY, MD.
SITTING AS THE DISTRICT COUNCIL FOR THE MARYLAND-
WASHINGTON REGIONAL DISTRICT IN
MONTGOMERY COUNTY, MARYLAND
Office of Zoning and Administrative Hearings
Stella B. Werner Council Office Building
Rockville, Maryland 20850
(240) 777-6660**

IN THE MATTER OF: *
WHITE FLINT CROSSING, L.L.C., Applicant *

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In Support of the Application *

Application No. G-830

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* * * * *

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In Support of the Application *

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* * * * *

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White Flint Park Citizens Association *

In Opposition to the Application *

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Before: Philip J. Tierney, Hearing Examiner

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I. SUMMARY

The proposed development involves a 5.907-acre parcel located within 1,500 feet of the White Flint Metro Rail Station in North Bethesda. The property is located on the west side of Rockville Pike directly across from the White Flint Mall and Fitzgerald's Auto World. The project includes 176,000 square feet of above grade commercial space, 60,000 square feet of commercial cellar space, and 413,114 square feet of residential space or 435 dwelling units for a total development of 649,114 square feet.

The proposal is recommended for approval by the Technical Staff of the Maryland National Capital Park and Planning Commission (MNCPPC), the Planning Board, and the closest residential neighbor, the Fallstone townhouse community. The Opposition contends that the Applicant's traffic study is too narrow to properly evaluate the real impact of the proposal and it relies on hazardous turning movements. These contentions are without merit for reasons explained later in this report.

The proposal contains many features that support its approval. It contains significant dedication and construction of Executive Boulevard from its current terminus at Woodglenn Drive to Rockville Pike. The proposal also provides for an interconnected street grid that will enhance the distribution of vehicular and pedestrian traffic. The proposal provides for mixed uses, a main urban center for North Bethesda, urban open spaces, extensive streetscape, and 66 units of on-site affordable housing under the Moderately Priced Dwelling Unit (MPDU) Program. Finally, the proposal strictly complies with the planning objectives for this location. For these reasons, it is recommended that the application be granted and the development plan be approved.

II. STATEMENT OF THE CASE

Zoning Application No. G-830, filed October 24, 2004, requests reclassification from the C-2 Zone to the TS-M Zone of 5.907-acres known as Lot 4, Higgins Estate Subdivision, located at 11401 Rockville Pike, North Bethesda in the 4th Election District.

The Technical Staff of the M-NCPPC initially reviewed the application and, in a report dated March 6, 2005, recommended approval. Three members of the Planning Board considered the matter on May 13, 2005 and unanimously recommended approval.

A public hearing was convened on May 17, 2005 and evidence was presented both in support and in opposition to the application. During the hearing a question was raised about the visibility of the zoning sign posted along Rockville Pike. The Applicant agreed to relocate the sign to a more visible location and it was relocated on May 18, 2005. The record was held open for 30 days to allow additional public comment from the parties and those who may not have seen the zoning sign at its initial placement. The record closed on June 17, 2005.

III. FINDINGS OF FACT

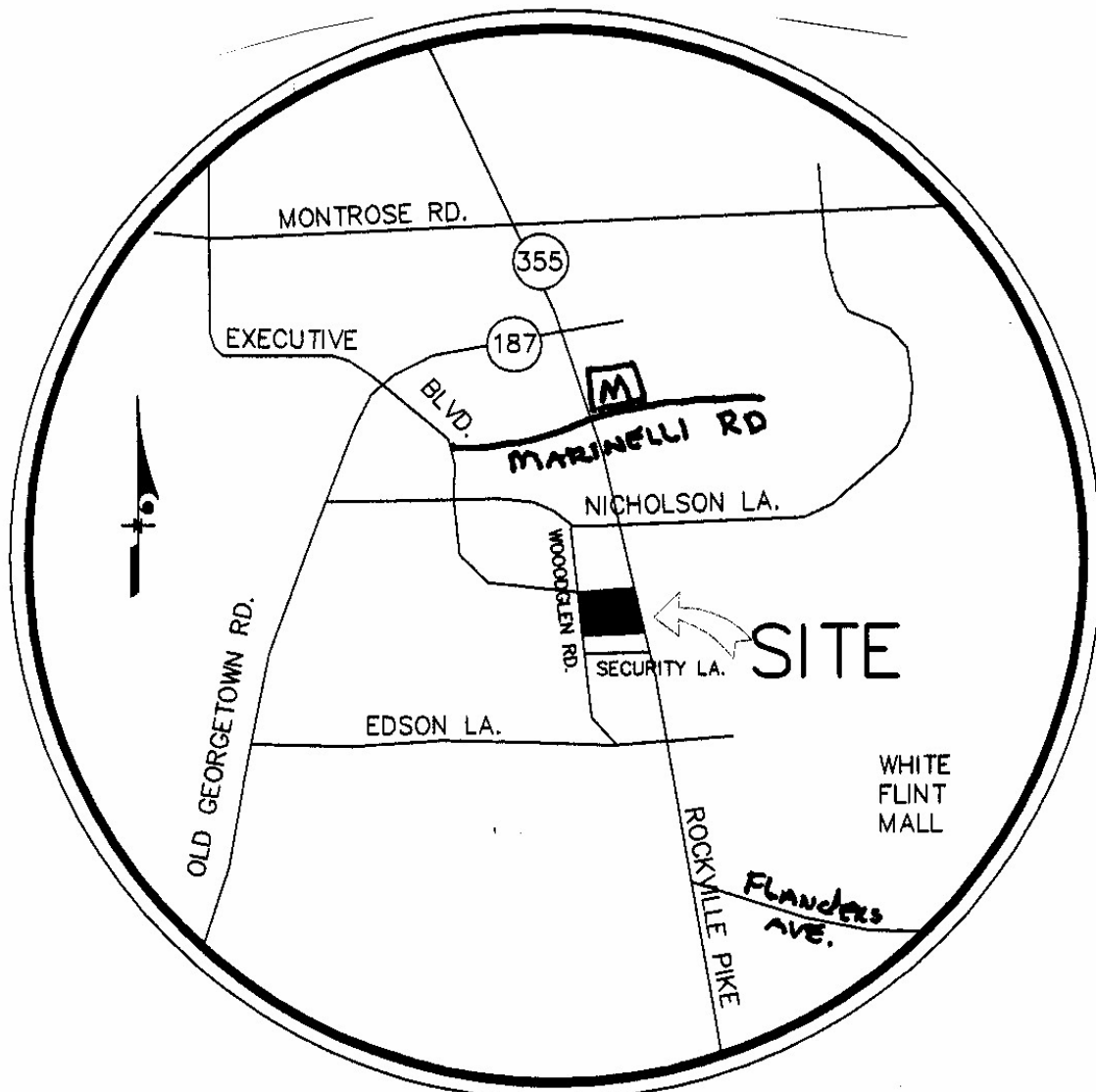
For the convenience of the reader, the facts are grouped by subject matter. The facts are largely uncontested but where conflicts exist they are resolved under the preponderance of evidence test.

A. Subject Property

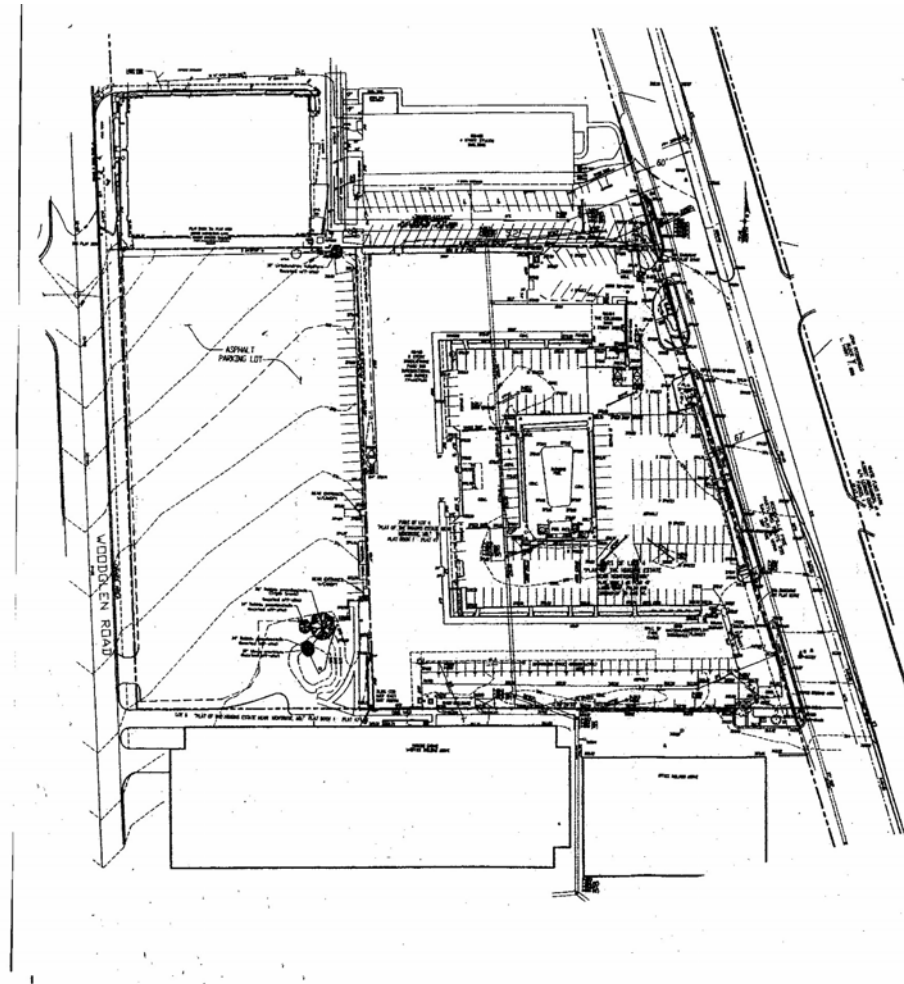
The subject property is located in the North Bethesda-Garrett Park Planning Area and within 1,500 feet of the White Flint Metro Station. The 5.907-acre tract is trapezoidal in shape and is composed of two parcels. An eastern parcel contains 3.75 acres and is currently developed with the 160 unit Park Inn Motel and 15,000 square feet

of retail uses. A western parcel contains 2.15 acres and is used for 300 surface parking spaces that are accessible from Woodglen Drive. These parking spaces are used by workers from the adjacent office buildings located to the south, known as Rockwall I and II, whose ownership is affiliated with the Applicant.

The property is bounded on the east by Rockville Pike, on the south by land owned by an affiliate of the Applicant, on the west by Woodglen Drive and on the north by land owned by an affiliate of the Applicant. The general location and shape of the property is depicted below.



The topography reflects a 21-foot average drop in grade from the northwest corner to the southeast corner. The property extends about 1,560 feet in depth and is about 845 feet wide. Most of the site is impervious because of the large area used for surface parking and buildings. The only landscaped area is located in front of the motel along its Rockville Pike frontage. The site was developed before the adoption of storm water management regulations. This development pattern is depicted below.



B. Planning and Zoning History

The zoning history of the site reveals that it was initially zoned for residential uses under the R-90 Zone by the 1954 Regional District Zoning. This zoning was confirmed by comprehensive zoning in 1958. In 1952 the Board of Appeals approved a special exception for a motel and modifications to the special exception were granted in 1959 and 1977. In 1978, the property was reclassified to the C-2 by comprehensive zoning and this zoning pattern was confirmed by comprehensive zoning again in 2003. The site does not contain any historic structures and does not constitute a historic site.

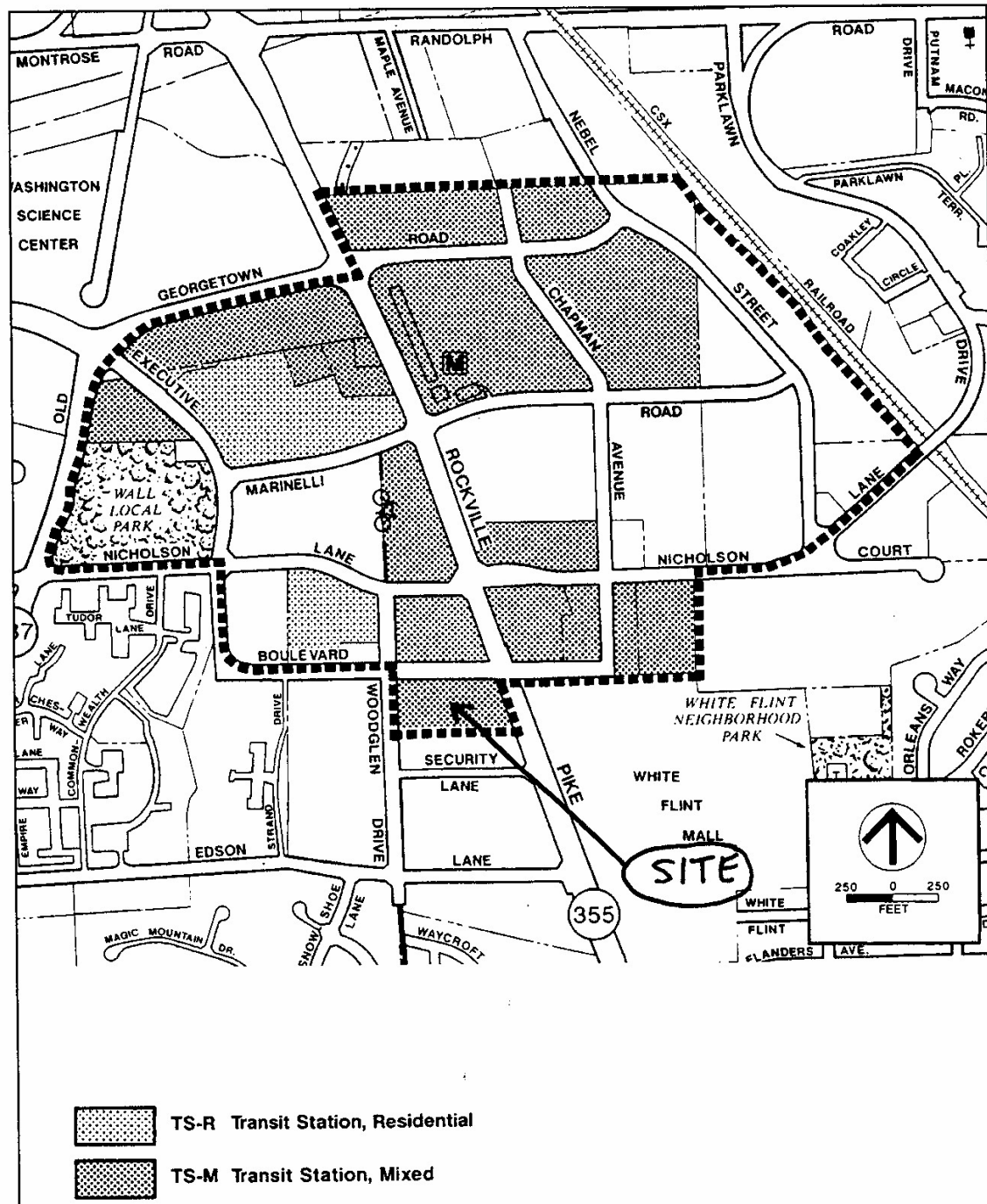
The site is located at the southern edge of the White Flint Sector Plan Area as delineated by the 1992 North Bethesda-Garrett Park Master Plan. The White Flint Sector Plan Area is divided into discrete sub areas. The subject property falls within sub area 6. The entire site is recommended for the TS-M Zone as a floating zone and the plan envisions the site as the southern gateway for the White Flint area. The current zoning recommendation is depicted on the next page.

The master plan contains a number of land use and urban design objectives related to the site. The land use objectives include:

- *Develop White Flint as the main urban center of North Bethesda.*
- *Capitalize on the public investment in the Metro system and encourage its use rather than continued reliance on the automobile.*
- *Promote mixed-use development near the Metro station to ensure the 24-hour vitality of the area.*
- *Include a significant transit serviceable residential component within the Sector Plan area.*
- *Develop policies to ensure a lively pedestrian environment.* [Ex. 64, p. 2]

WHITE FLINT SECTOR PLAN AREA - PROPOSED FLOATING ZONES

FIGURE 19



The urban design objectives include:

- *Combine activity nodes and transit nodes by locating new development and a variety of activities at or near transit stops.*
- *Provide legibility and a unique identity to districts by defining their edges, providing them with landmarks, and developing nodes as a focus for civic, recreational, residential and commercial activity.*
- *Use historic and natural features as landmarks to give a sense of place and unique identity to each district.*
- *Add local streets to create a more interconnected local street network and reduce the size of blocks in high intensity areas.*
- *Greatly improve the pedestrian friendliness of new and existing streets, particularly within walking district of transit nodes, and increase the number of pedestrian and bicycle routes to transit.*
- *Overcome the barrier characteristics of existing edges to facilitate pedestrian movement.*
- *Create a greenway system linking residential, commercial and employment centers with natural areas, parks, and community and cultural facilities.*
- *Ensure the identity and integrity of residential areas along major roadways and to strengthen community identity by creating attractive transportation corridors.* [Ex. 64, pp. 3-5]

C. Surrounding Area, Land Use and Zoning Pattern

Because the TS-M Zone is a floating zone, the evaluation of the applicability of the zone to the site requires delineation of a surrounding area in order to evaluate compatibility and other issues. The surrounding area is applied in a less rigid manner than for a Euclidean zoning neighborhood. In general, the surrounding area should take into account those uses that will likely be affected by the proposed development. Often, the surrounding area is likened to the ripples in a pond where a stone is tossed. The surrounding area ends where the ripples stop. The size to the stone obviously affects the size of the surrounding area.

The Technical Staff defined the surrounding area as bounded on the west by Woodglen Drive, on the North by Nicholson Lane, on the east by Rockville Pike and on

the south by Edson Lane. The Applicant agrees with the Staff's area.

The Opposition contends that the area should be larger because of the size of the project and its extended impact in terms of traffic and intensity of use. The Opposition makes a persuasive case. The Staff's area excludes the residential areas to the southeast and these areas will be impacted by the proposed use. The Staff's area also excludes some TS-R and TS-M projects located to the north that are used by both the Staff and the Applicant for comparative evidence of compatibility.

The surrounding area used for this analysis is extended southeast to the Flanders Avenue area and the residential areas where the Opposition resides and will likely receive impact from this development. The surrounding area is also extended north to the Marinelli Road area to include the TS-M and TS-R zoned mid-rise and high-rise buildings. This enlarged area is more in line with the likely impact of the project. Moreover, the enlarged area is more consistent with the area used for the compatibility analysis by both the Technical Staff and the Applicant, and the areas used by the District Council in other TS-M cases in this area.

The land use and zoning pattern reflects mixed uses including office, commercial, multi-family, and single-family residential uses. Located east of the site are the White Flint Mall and Fitzgerald's Auto World dealership developed under the C-2 Zone. Located immediately north of the site is a 4-story office building developed under the C-2 Zone as Wood Glen Park. Located at the northwest corner of Rockville Pike and Nicholson Lane is an automobile service station developed under the C-2 Zone. Located further north along both sides of Rockville Pike are retail uses developed under the C-2

Zone and mid-rise to high-rise residential and office buildings developed under the TS-M and TS-R zones.

Located northwest of the site is a WSSC water facility. Located directly west of the site is Fallstone, a residential townhouse community located on the west side of Woodglen Drive and buffered from the street by extensive vegetation and a 20 foot rise in elevation from street level. The townhouse community is developed under the PD-11 Zone. Located directly south of the site are the two Rockwall office buildings developed under the C-O Zone with frontage along Security Lane. The zoning pattern of the enlarged surrounding area is depicted on the next page.

D. Proposed Development

The proposed development would allow a transit oriented combination of commercial and residential uses set within a space containing a number of amenities.

1. Land Uses

The project would include 176,000 square feet of above ground retail uses, 60,000 square feet of commercial cellar space, and 413,114 square feet of residential space (435 residential units including 66 MPDUs) for a total development of 649,114 square feet. The project reflects an overall density of 2.29-floor area ratio (FAR), which is consistent with the master plan recommendation of 2.4 FAR with an MPDU bonus.

Parking will be both underground and in a structured parking garage. There would be a minimum of 1,219 new parking spaces and 560 existing spaces in the adjacent Rockwall II office building. The development would be completed in a single phase.

2. Amenities

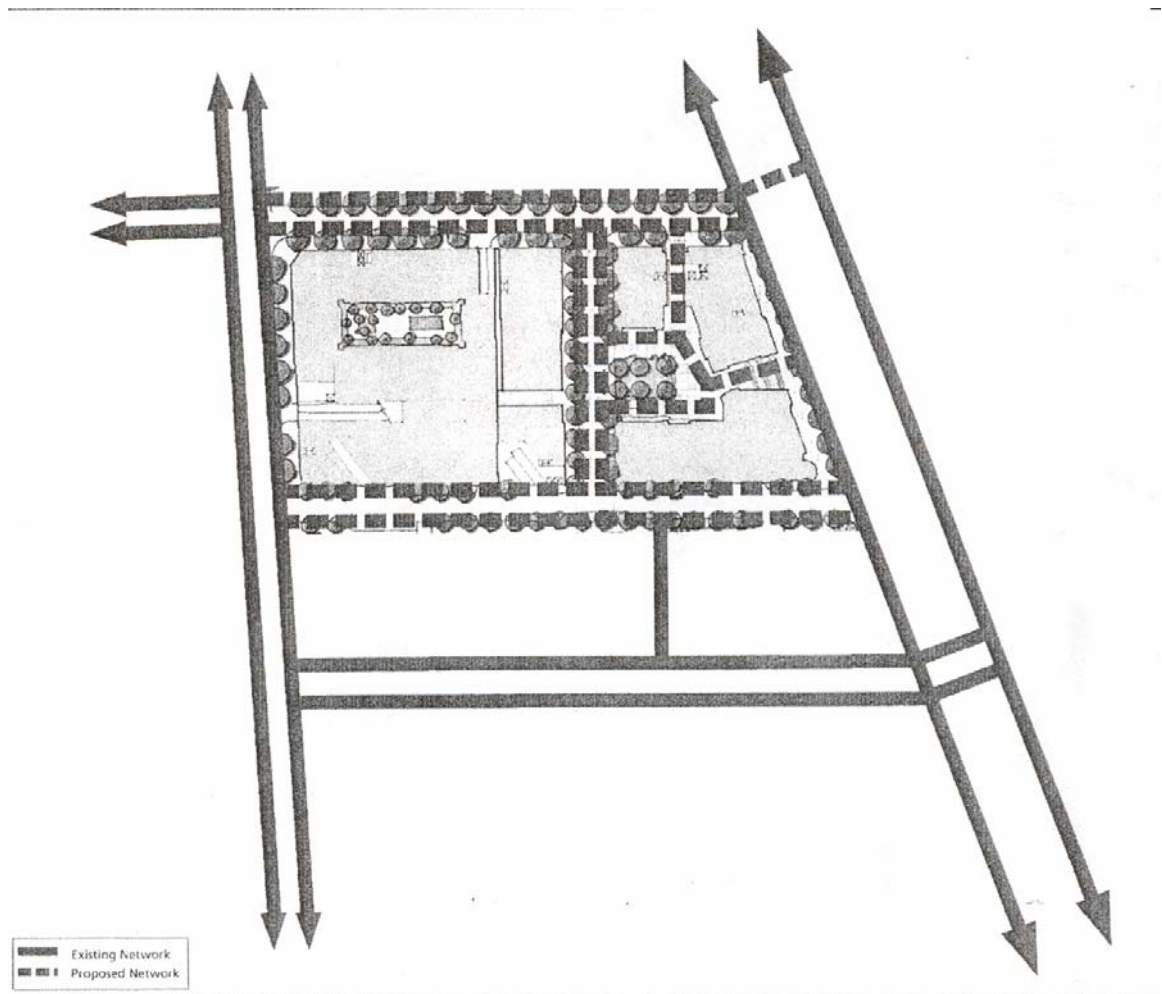
The large block that includes the site and other parcels will be broken into a smaller street grid to make the area more permeable and attractive for pedestrians. The smaller street grid will provide for better pedestrian and vehicular traffic circulation alternatives to Rockville Pike.

Amenities include the extension of Executive Boulevard across the northern perimeter of the site to a juncture with Rockville Pike. A service drive will be located along the southern perimeter of the site, and a north-south street known as Festival Street will connect the service drive to Executive Boulevard. This street grid is designed to slow traffic and offer a buffer for pedestrians. The street grid will also provide pedestrian access to and from the Metro station.

All streets connected with the project will have sidewalks, street trees, pedestrian scale streetlights, benches, other streetscape improvements and ample building setbacks. These improvements will also include landscaping and public art. A plaza will provide public space at a central location adjacent to Festival Street and will be bordered by two story shops to define its public character. The plaza will contain landscaped areas, outdoor seating areas, event space and pedestrian connections to Rockville Pike. This concept is depicted on the next page.

The Applicant initially proposed a 25-foot wide sidewalk from the Rockville Pike curb to the proposed buildings. The sidewalk width was discussed with the Technical Staff, which concluded that the 25-foot width was adequate as consistent with sidewalks along Wisconsin Avenue in Bethesda and the District of Columbia. During the hearing concerns were raised that the proposed 25-foot sidewalk width would be too narrow for

double rows of street trees between the curb and the pedestrian walkway as envisioned by the sector plan. Following the hearing, the Peoples' Counsel and the parties met with the Technical Staff. The Applicant subsequently revised the development plan so the building setback from the Rockville Pike right-of-way would provide a 35-foot wide sidewalk. The issue of whether double rows of street trees are necessary will be evaluated at the site plan stage.



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Pedestrian Circulation-Site

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The project provides sufficient amenities to meet the requirements of the TS-M Zone for public use space and active and passive recreational space. The urban plaza would contain over 19,079 square feet of space, which exceeds the 10% public use space requirement. Some 47,698 square feet of active and passive recreational space are proposed to be located in a combination of sidewalks, structures and pedestrians areas. For example, there will be rooftop courtyards, rooftop amenity space for residents and public amenity space within buildings. The total recreational space would be 25% and meets the requirements of the TS-M Zone.

Other amenities include the improvement of the bicycle trail along Woodglen Drive, considered a north-south greenway, and the extension of the bicycle trial along Executive Boulevard. Public art will be integrated into the public spaces and will highlight “White Flint” in public spaces or on building facades to recognize the significance of the location.

Another important amenity is the Applicant’s commitment to affordable housing by means of a binding element under the development plan. The commitment will ensure at least 66 MPDUs will be provided on site for this mixed-use project.

3. Building Layout

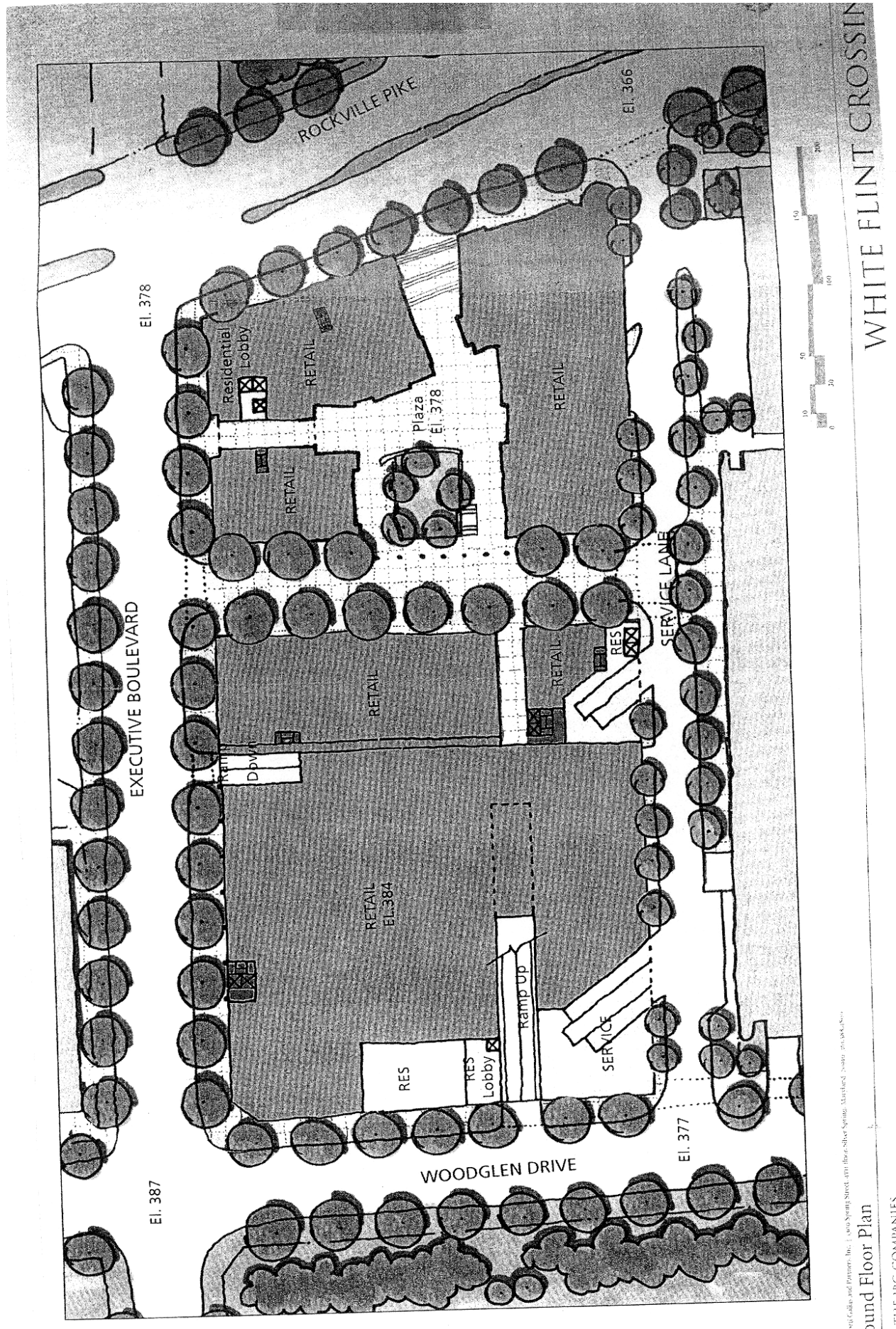
The building layout is arranged to insure compatibility with the nearby residential townhouse community and the influence the Rockville Pike corridor. The placement of buildings also considered topographic conditions, vehicular access, pedestrian connections, master plan recommendations and the requirements of the TS-M Zone.

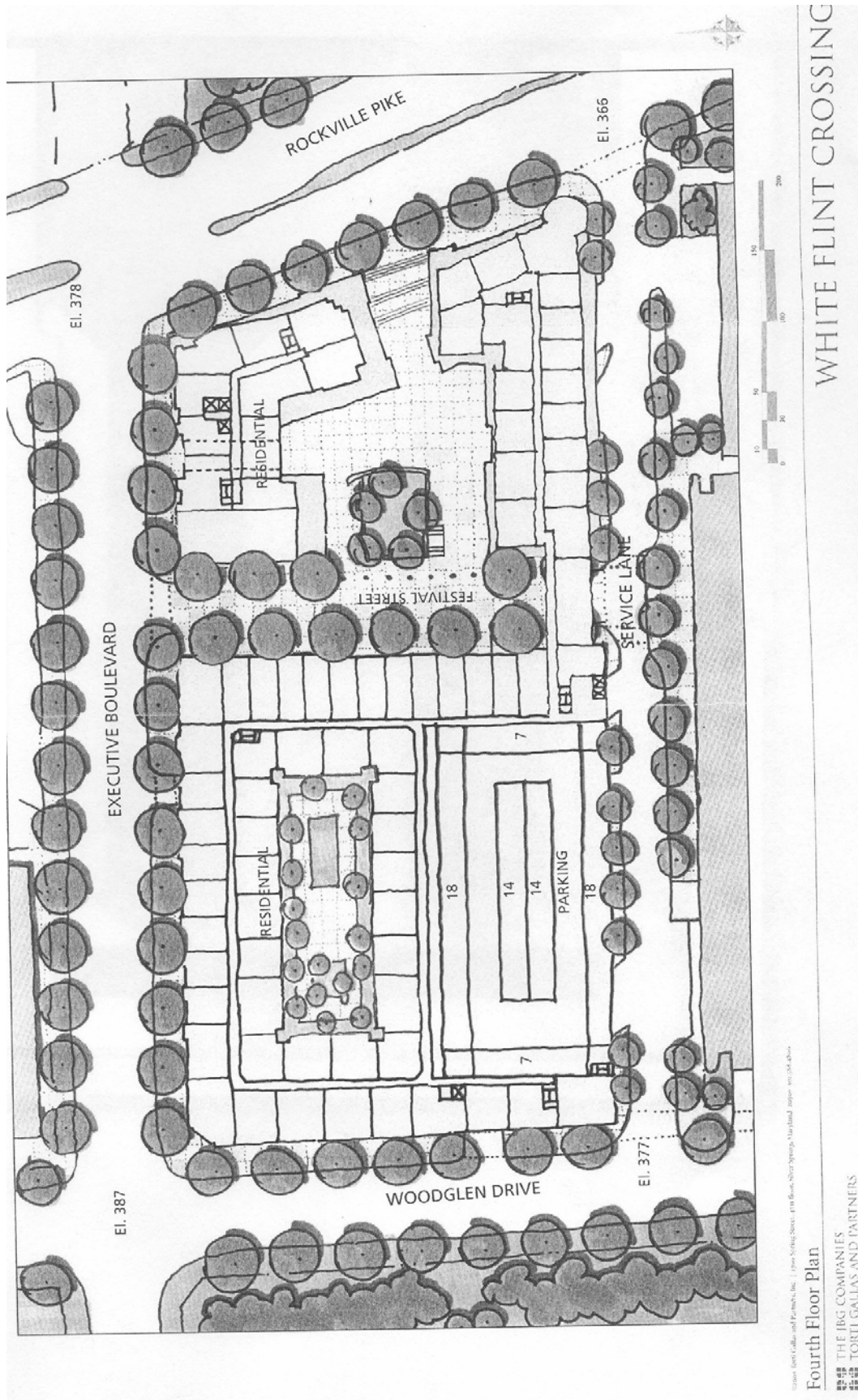
The site will be divided into two blocks separated by Festival Street. The western block will contain a 60,000 square foot grocery store on the ground floor, which will be

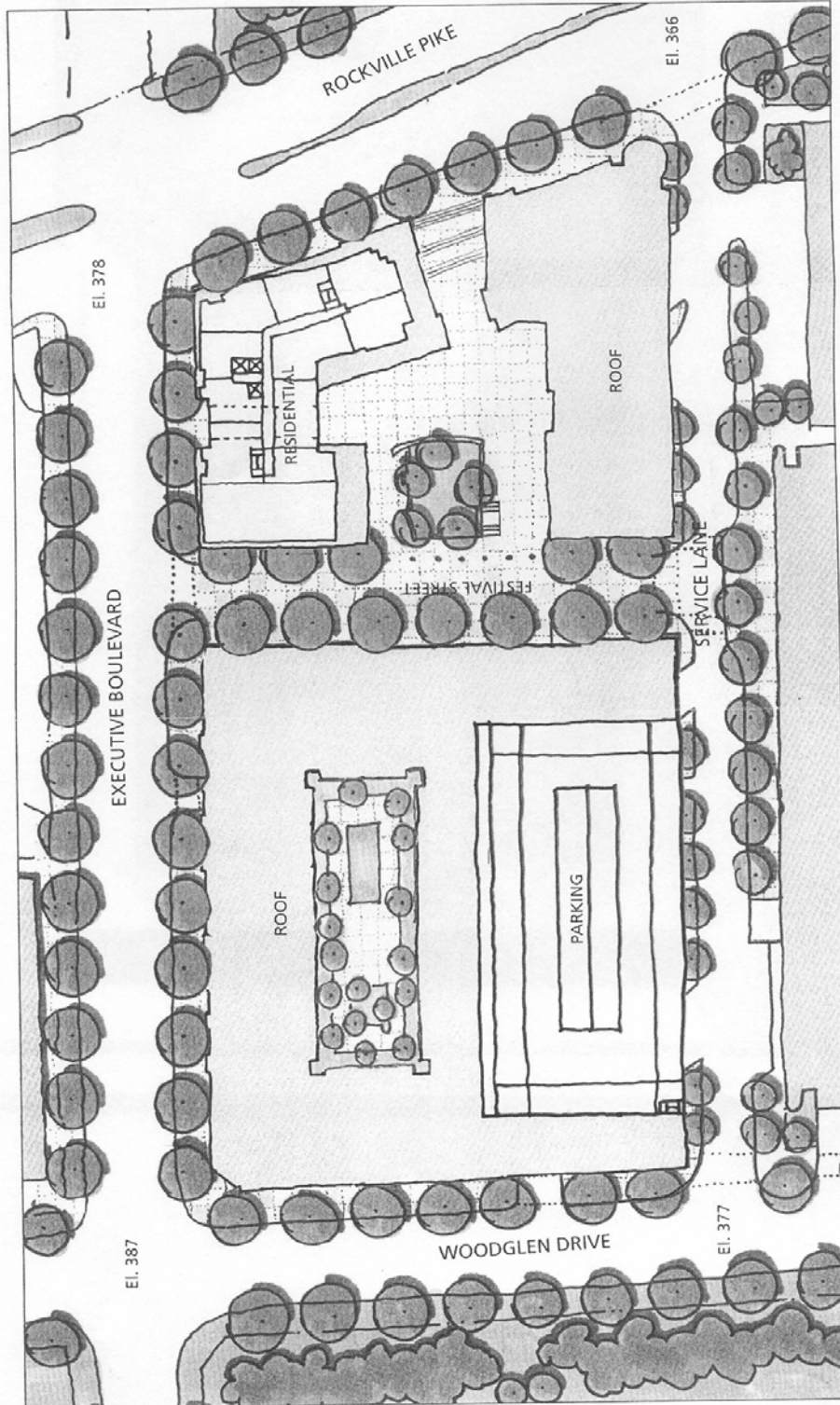
operated by Whole Foods Market. The other retail uses will be located on the ground floor space and residential uses will be located above the retail uses. A parking garage will also occupy this block and will be bordered by the grocery store and residential uses so it will not be visible from Woodglen Drive. A binding element of the development plan provides that the building height along Woodglen Drive will be limited to no more than 6 stories. At the site plan stage, the project will be reviewed to eliminate any visibility of the garage or parked cars from the street or nearby residential uses.

The eastern block will include greater densities and building heights because it is closer to Metro. There will be two story retail uses at the base of the buildings along Rockville Pike and residential uses will be placed above. The eastern block will also contain the internal public plaza space behind the buildings with frontage along Rockville Pike. Smaller shops and restaurants will border the plaza that will allow pedestrians to freely cross through the site unimpeded by traffic obstacles.

The building façade along Rockville Pike will reflect a mid-rise podium ranging from 4 to 7 stories. A 24-story point tower will be placed at the northeast corner of the site. The point tower is intended to represent the southern gateway to the White Flint area. The ground floor and upper floor building layouts and building height diagram are illustrated on the following pages.



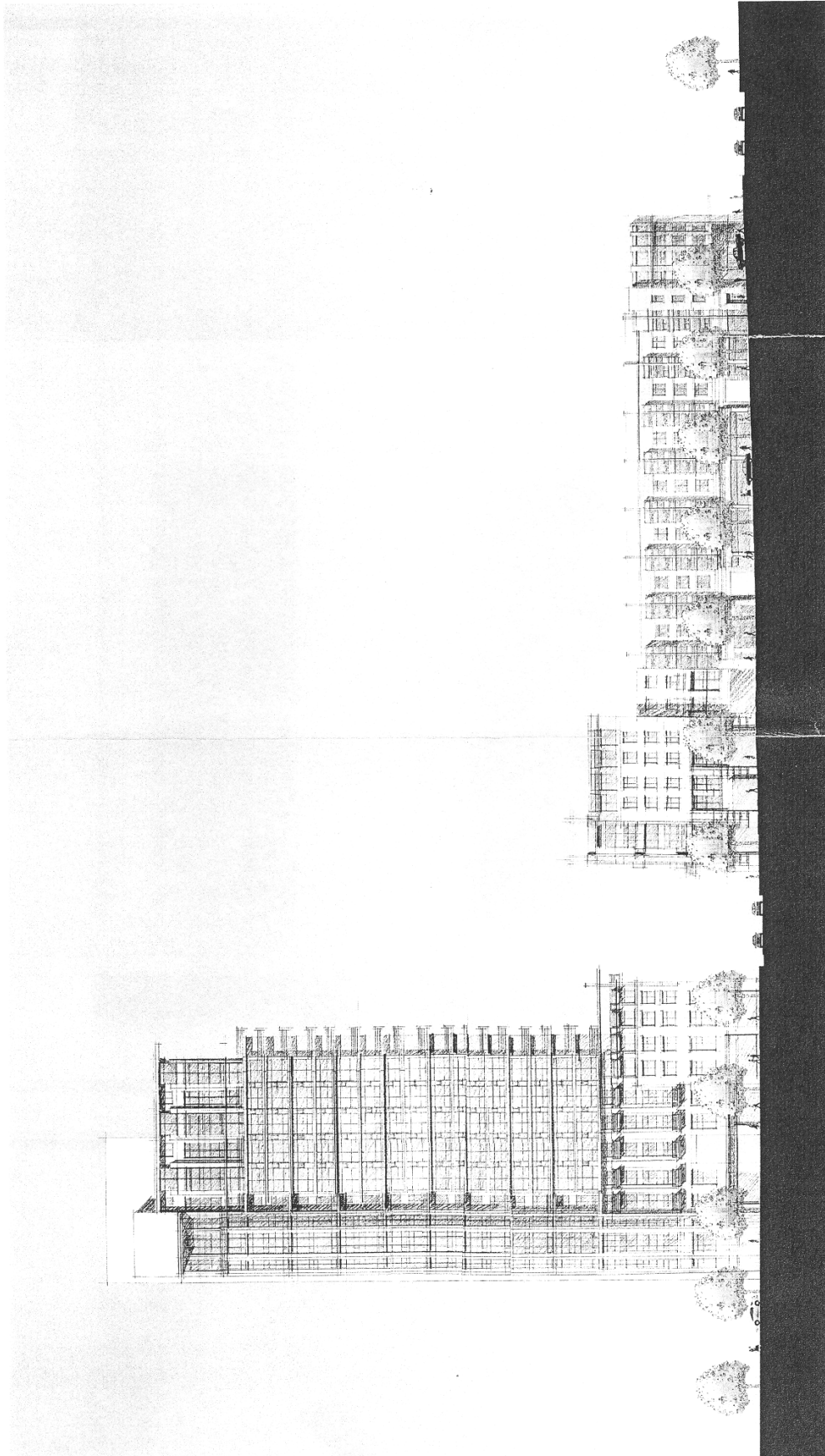




WHITE FLINT CROSSING

Typical Upper Floor Plan
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Building Height Diagram Along Executive Boulevard

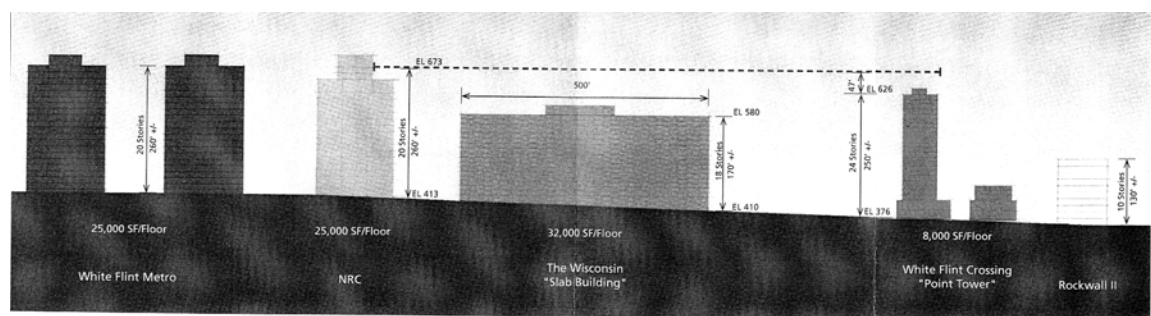
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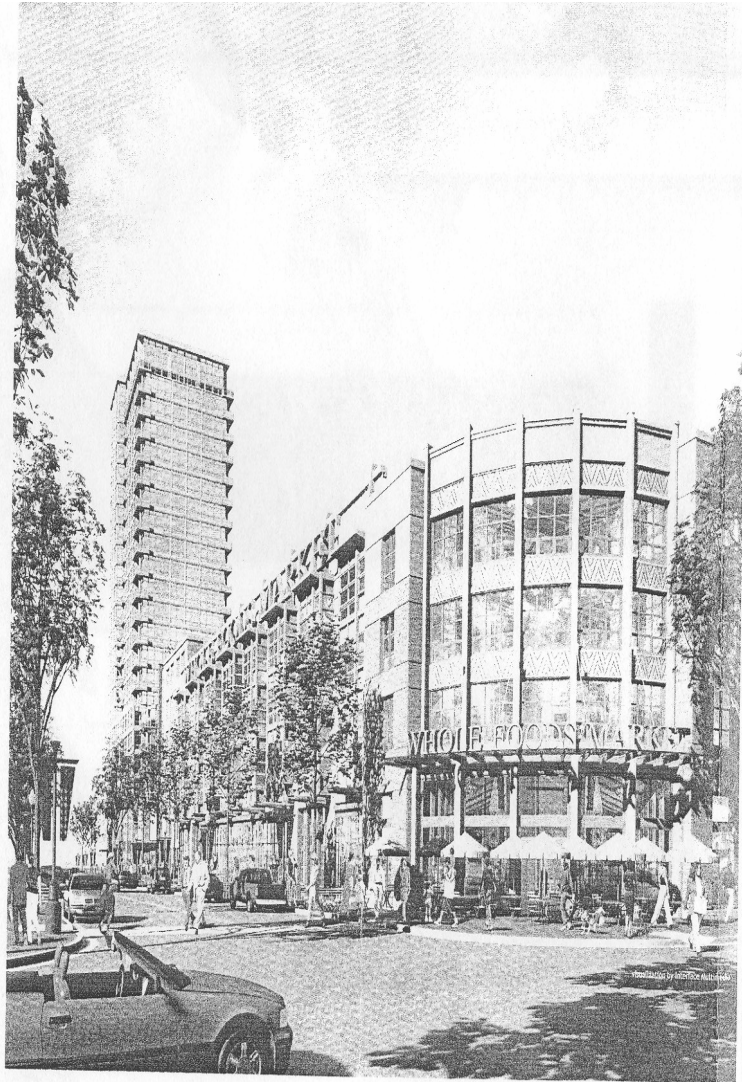
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4. Building Scale

The proposal seeks to enhance pedestrian movement by locating the point tower and the greatest densities closest to Metro. Three of the four buildings proposed in the development plan will range from 6 to 7 stories in height with commercial uses on the lower floors and residential units on the upper floors. The fourth building, the point tower, will rise to a maximum height of 24 stories.

The point tower is designed as a slim, signature building to function as a landmark for the White Flint area. It is also intended to implement the recommendations of both the North Bethesda-Garrett Park Master Plan and the White Flint Sector Plan for the creation of a high-density and pedestrian oriented corridor along Rockville Pike that would support a vibrant urban life. The 24-story building height scale is consistent with the NRC building and other high-rise buildings located to the north. This building scale comparison is depicted below and architectural renderings of the building scale are illustrated on the following pages.





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Executive Boulevard Looking East

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Rockville Pike and Potomac River, 1900. Photo by the National Archives, Maryland, 1900. 1900.

Rockville Pike Looking North

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5. Perpetual Maintenance and other binding commitments

Owners or associations of owners will be required to provide for the perpetual maintenance of common and quasi public areas through legally binding commitments as illustrated by documents submitted by the Applicant, see, Ex. 45 (b) and (c). If residential areas are leased properties, the obligation for perpetual maintenance would vest with the landlord. If the residential areas are sold as condominiums, the obligation would vest with the condominium association.

The development plan contains a binding element to insure flexibility if needed to convert unused commercial space to residential use. The project currently envisions the commercial development of about 176,000 square feet or 0.68 floor area ratio. The TS-M Zone limits commercial FAR to 1.0. The project is limited to an overall FAR of 2.4 or 649,114 square feet of total mixed uses.

Binding elements have been revised through changes to address concerns raised during the hearing. The final language includes the following binding elements:

- 1. Development on the property shall be limited to 649,114 square feet of development (that includes 60,000 square feet of cellar space). The total amount of residential development on the property (including the number and percentage of MPDUs) may increase as a result of the conversion of commercial to residential use so long as the ground floor of each building remains commercial (except for residential lobbies and other ancillary residential uses associated with those buildings at the ground level). The minimum amount of commercial development will be 130,000 square feet*
- 2. The Applicant shall provide up to 15% of the total number of residential units as MPDUs depending on the amount of the density bonus achieved by the Applicant pursuant to Chapter 25A of the Montgomery County Code, as amended 2004. The total number, mix and location of the residential units, including the MPDUs, shall be determined at site plan. All MPDUs shall be provided on-site.*

3. *The following maximum height limitations shall apply to the development: (i) up to 24 stories for the building A located at the northeast corner of the property along Rockville Pike, (ii) up to six stories for the building(s) located along Woodglen Drive and (iii) the height of the parking structure located west of Festival Street, if any, shall be no greater than the height of the adjacent residential building(s) along Woodglen Drive. The final determination of the height, in feet, of each of the buildings referenced on the development plan shall be made at site plan. [Ex. 70 (b)]*

E. Public Facilities

The relevant public facilities include schools, water and sewer, storm water management and environmental issues, area roads, and transit. The impact of the proposed development on public facilities is evaluated at both the zoning and subdivision stages.

1. Schools

The schools serving the subject property are in the Walter Johnson cluster with assignments to Garrett Park Elementary School, Tilden Middle School and Walter Johnson High School. Evidence indicates that the current Annual Growth Policy shows adequate school capacity in the cluster to accommodate the proposed development.

The School Board may revise school boundaries or take other remedial actions to address individual school capacity problems and there is no evidence that a regional capacity problem exists. This matter is reviewed again at the subdivision stage.

2. Water and Sewer

The property is classified under water service category W-1, which indicates that water service is immediately available to site. A 16-inch water line is under Rockville Pike and a 24-inch water line is under Woodglen Drive. The Technical Staff reported

that local water service is deemed to be adequate and the proposed development will not have adverse impact on existing water facilities. Hence, the evidence supports findings of fact that there is adequate water capacity for the project.

The property is also classified under sewer service category S-1, which indicates that sewer service is immediately available. A sewer line is located under Rockville Pike. The Technical Staff reported that local sewer service is deemed adequate and the impact of the proposed development will be negligible. The evidence supports findings of fact that there is adequate sewer capacity for the project.

3. Storm water and Environmental Issues

An existing closed storm drain system is located on Woodglen Drive, Rockville Pike and Security Lane. The proposed development will include a storm water management system that will provide significant enhancements of water quality and quantity controls. The Applicant proposes to install underground structures and filtration that will provide water quality treatment and water quantity control through detention and storage.

There are no wetlands on the site. The grading will conform to all soil conservation and sediment control requirements. Aforestation will occur through landscaping efforts and the Applicant's evidence indicates that it can be accomplished on site. Full landscaping plans will be provided at the site plan stage. The evidence shows that the proposed development will tend to prevent soil erosion and would preserve any remaining natural features of the site.

4. Area Roads

The area road network is anchored by Rockville Pike, a six-lane divided road within a 120-foot right of way as it passes the site. Woodglen Drive is a two-lane road that extends parallel to Rockville Pike immediately west of the site. Executive Boulevard is a four-lane road within an 80-foot right of way that will connect with Rockville Pike in a perpendicular fashion as part of a road project provided by the Applicant under the development plan.

a. Traffic Capacity

The evaluation of the traffic impact of the proposed development involves the examination of existing and projected operating conditions at eight intersections, six of which are located in the White Flint Policy Area with a Critical Lane Volume (CLV) standard of 1,800, and the remaining two intersections in the North Bethesda Policy Area with a CLV standard of 1,550. The public streets evaluated include Rockville Pike, Executive Boulevard, Nicholson Lane, Woodglen Drive, Huff Court, Security Lane, Edson Lane and Marinelli Road.

Once existing operating conditions are determined, updated background traffic data, and projected trip generation rates for the proposed use are added in an incremental fashion. When total projected traffic conditions were examined, all eight intersections were determined to operate within the applicable CLV standards for levels of service. Therefore, the proposed development meets the requirement for a local area transportation review (LATR), See, Ex. 43 (a), Ex. 16, p. 27.

The Opposition contends that the Applicant's traffic study is incorrectly limited to an evaluation of only two signalized intersection in each direction from the site. The

Opposition contends that the study should be expanded to evaluate three signalized intersections in each direction from the site. In support of this contention, the Opposition relies on an interpretation of Guidelines for LATR, Ex. 60, which differs from the interpretation of the Technical Staff and Planning Board.

The dispute involves the relevant trip generation rate that should be applied for the proposed grocery store. The Applicant used a rate provided by the Technical Staff and derived from data involving shopping centers that includes grocery stores, Ex. 60, Table 2, p. 13. The Opposition used another rate derived from data that includes major food chains, Ex. 60, Table B-2, p. 49. The Opposition's rate produces a higher volume of p.m. peak hour trips and would require the traffic study to be expanded to three intersections under the Guidelines for LATR. However, the Opposition neglected to apply a 25% discount provided the Applicant by the Technical Staff because of the mixed-use nature of the TS-M project. The failure to use the discount increases the disparity between the Applicant's traffic study and the Opposition's analysis. The Technical Staff and the Planning Board have authorized the use of this discount in other TS-M zoning cases and determined it to be reasonable for application here.

The Opposition faces a significant hurdle in the dispute over the relevant trip generation rate. Both the Technical Staff and the Planning Board support the methodology used by the Applicant in determining the relevant trip generation rate for this particular case. While the Opposition makes a reasonable argument that its rate is relevant, there is an equally reasonable basis for the use of the Technical Staff's methodology.

The Planning Board is the only administrative agency delegated responsibility to apply the Guidelines for LATR. As such, the Planning Board's interpretation is entitled to a presumption of correctness absent a showing of arbitrariness¹. The evidence indicates that this issue was argued before the Planning Board in its consideration of this application and the Board supported the use of the Staff's methodology. In this situation, the methodology used by the Technical Staff and authorized by the Planning Board must be given controlling weight.

b. Traffic Safety

The Applicant has built several turning movements into its traffic study that involves modifications of median strips along Rockville Pike. The first turning movement involves a proposed left turn from northbound Rockville Pike to westbound Executive Boulevard. The future intersection may not be signalized because of the proximity of signalized intersections along Rockville Pike at Nicholson Lane and Security Lane. The Applicant's evidence shows the turning movement could be made in a safe manner without a signal because of traffic gaps caused by the operation of the signal at the intersection of Nicholson Lane and Rockville. The Opposition contended that the turning movement could lead to unsafe conditions and supported the alternative

¹ A presumption of correctness is accorded to administrative interpretations of regulations enforced by administrative agencies. *Catonsville Nursing Home, Inc. v. Loveman*, 349 Md. 560, 709 A.2d 749 (1998); *Dept. of Health & Mental Hygiene v. Riverview Nursing Center, Inc.*, 104 Md. App. 593, 657 A.2d 372 (1995). The presumption can be rebutted upon a showing of arbitrariness by the administrative agency. For example, parties to a zoning case sometimes call Planning Board staff to testify about the reasons and factual basis supporting a particular action. On rare occasions, this testimony has revealed inconsistencies or arbitrary conduct in how regulations were interpreted or applied. There was no showing here of arbitrary conduct by the Planning Board or staff. While deference must be given to the Planning board in this report, the District Council is not bound by the Guidelines for LATR and may broaden the area for traffic evaluation in cases where it determines the circumstances require broader review.

use of left turns at Edson Lane or Security Lane so traffic could proceed to Woodglen and north to Executive Boulevard for a safer left turn.

The Opposition did not make its case that the proposed turning movement would be unsafe. Indeed, the evidence shows that the State Highway Administration approved the left turn movement and did not perceive a safety problem. The Technical Staff and the Planning Board have also approved the turning movements. The Applicant's traffic study shows that within a one-hour period, some 300 trips at the Nicholson Lane intersection will cause gaps in southbound traffic that would enable 300 cars to make a left turn at Executive Boulevard. Only 175 trips are estimated to make a left turn onto Executive Boulevard and the preponderance of evidence establishes that the turning movement can be made in a safe manner.

The second disputed turning movement involves a southbound storage lane in the Rockville Pike median strip. This movement would permit southbound traffic to make a U turn or left turn into Fitzgerald's Auto World. The improvement was condition of the Planning Board's approval of the Wood Glen Commons subdivision. The improvement was simply carried forward for purposes of the Applicant's current study to reflect an approved condition. It does not constitute a factor that would impact whether or not the proposed development meets the CLV standards for traffic capacity. Indeed, the evidence shows that the proposed development would meet the CLV standards without the improvement. The preponderance of evidence shows that the improvement will enhance the safety of traffic circulation along Rockville Pike.

c. Absence of Adverse or Unsafe Traffic Impact

The evidence supports findings of fact that the proposed development will not have an adverse impact on traffic or pedestrian movements. Indeed, the evidence supports findings of fact that traffic and pedestrian safety will actually improve as a result of the proposed development.

The proposed extension of Executive Boulevard, as called for by the master plan, constitutes a significant improvement that will enhance the overall vehicular and pedestrian circulation of the area. It will permit traffic to avoid the congested intersection at Nicholson Lane and Rockville Pike and provide for alternatives routes. Existing bike trails will be enhanced and extended to permit bikers to more easily reach the White Flint Metro Station. The smaller street grid and additional sidewalk space will increase pedestrian mobility. The evidence supports a finding that all internal vehicular and pedestrian circulation systems are safe, adequate and efficient.

5. Transit

The site is eligible for the TS-M Zone in part because it is located within 1,500 feet of the White Flint Metro Station, which provides connections to rapid rail service throughout the Metropolitan Washington, D.C. region. The North Bethesda Garrett Park Master Plan and White Flint Sector Plan designate the site as a transit development area and encourage higher densities to be located close to the metro station in order to increase metro ridership and reduce automobile traffic in the area. The development plan contains features that further these objectives.

IV. SUMMARY OF TESTIMONY

The testimony is grouped according to the Applicant's case in chief, the Opposition's case in chief and the Applicant's rebuttal. All testimony was presented under oath.

A. Applicant's Case in Chief

Matthew Hurson is Senior Development Manager with JBG companies. He has over 25 years of experience in real estate development throughout the nation and more recently in the Washington, D. C. metropolitan area. He described the history of the project, the creation of the development plan, and other aspects of the project. The subject property is made up of about 5.9 acres consisting of two parcels. The first parcel contains 3.75 acres and is the site of the Park Inn Hotel, a facility of 160 rooms, and about 15,000 square feet of retail space. The hotel was built in the 1950s. The second parcel contains about 2.15 acres and is developed with about 300 surface parking spaces with access to Woodglen Drive and used by the adjacent Rockwall office buildings. .

Mr. Hurson indicated that JBG companies acquired the subject property and adjacent land. The Applicant is an affiliate of JBG companies and acquired the site in 2004 and 2005. JBG companies also acquired the property to the north, developed as Wood Glen Park, and properties to the south with frontage on Security Lane and known as the Rockwall I and II office buildings.

Mr. Hurson concluded that the proposed TS-M Zone would provide more flexibility and uses than permitted under the current zoning. The development plan envisions a mixed use and transit-orientated community that follows the recommendations of the approved sector plan and the standards of the TS-M Zone. The

flexibility of the zone will permit variable building heights and setbacks to implement the planning and zoning objectives for this location.

Mr. Hurson indicated that the project would be completed in a single phase. The project would consist of 236,000 square feet of gross commercial space and include 435 dwelling units with 66 MPDUs. There would be a minimum of 1,219 new shared parking spaces and 560 existing spaces in the Applicant's adjacent Rockwall II office building.

Mr. Hurson explained that the development plan contains a binding element to insure flexibility if it is necessary to convert unused commercial space to residential use. The project currently envisions the commercial development of about 176,000 square feet or 0.68 FAR. The TS-M Zone limits commercial FAR to 1.0. The project is limited 649,114 square feet of total mixed uses, which includes 60,000 square feet of cellar space that is not counted against the commercial FAR limit.

Mr. Hurson stated that amenities of the project are in two forms. The first involves amenities that are accessible to the public including an extension of Executive Boulevard from Wood Glen Drive to Rockville Pike, a private drive on the southern end of the property, streetscape such as seating, trees and landscape, and an urban plaza adjacent to Rockville Pike. These amenities are to be located in general common areas. The second involves amenities that are accessible only to residents of the project and include recreational areas, pools, fitness centers, hallways and lobbies. These amenities are located in private common areas.

Mr. Hurson testified that arrangements would be made for the perpetual maintenance and repair of all common areas. Associations of owners will be required to

provided for the perpetual maintenance of common areas through legally binding commitments as illustrated by documents providing for the maintenance of common and quasi public areas, see, Ex. 45 (b) and (c). If the residential areas are leased properties, the obligation of perpetual maintenance would vest with the owners. If the residential areas are sold as condominiums, the obligation would vest with the condominium association.

Mr. Hurson concluded that the proposed development would be in the public interest. It would have a positive impact on the use of Metro at this location, as it will increase rider-ship. It would also reduce auto trips as residents of the mixed use project would be able to walk to nearby retail services

Neal Payton qualified as an expert witness in architecture and urban design. He has 22 years of experience in these fields and prepared the development plan and other supporting documents. The subject property is bounded by Rockville Pike on the east and Wood Glen Drive on the west and is sandwiched between office buildings on the north and south. The White Flint Metro Station is located within a 1,500 walk of the site. The topography slopes downward about 21 feet from a high point at the northwest corner of the site to a low point at the southeast corner. The zoning history of the site indicates that it was initially classified under the R-90 Zone in 1954, a designation that was changed to the C-2 Zone in 1978. The C-2 Zone was reconfirmed in 2003.

Mr. Payton described the land uses within the surrounding area. To the north along Nicholson Lane are office buildings and a automobile service station at the intersection with Rockville Pike. To the northwest of the site is a WSSC water facility. To the west is Fallstone residential community, a development of townhouses that are

located to the west of Woodglen Drive and buffered from the street by extensive vegetation and a 20 foot elevation in grade from street level. To the south are office buildings. To the east across Rockville Pike are White Flint Mall and the Fitzgerald Automobile dealership.

Mr. Payton indicated that the proposed development would be made up of four buildings with mixed uses. Three of the buildings will range from 6 to 7 stories in height with commercial uses on the lower floors and dwelling units on the higher floors. Parking will be both underground and in a structured parking garage. The fourth building, known as the point tower, will be located at the corner of Executive Boulevard extended and Rockville Pike and will rise upward to a maximum height of 24 stories. This building is intended as an elegant, slim, signature building to function as the southern gateway to the White Flint area. It is also intended to implement the recommendations of both the North Bethesda-Garrett Park Master Plan and the White Flint Sector Plan for the creation of a high-density and pedestrian oriented corridor along Rockville Pike that would support a vibrant urban life.

Mr. Payton explained that the project would also have a number of amenities. The large block that makes up the site will be broken into segments to make the area more permeable and attractive for pedestrians. A north-south Festival Street will extend through the middle of the site between buildings to the east and west and will link with Executive Boulevard to the north and a service road to the south. Festival Street is intended to provide for both automobile traffic and pedestrians but can be shut down to traffic for special events. The street will also provide pedestrian access to and from the metro station. All utilities will be placed underground.

Mr. Payton testified that both Executive Boulevard and the service road will provide east-west links between Rockville Pike and Woodglen Drive. The applicant will provide the right of way for both roads. Executive Boulevard will contain a bike path. All the internal streets will have sidewalks, streetscape improvements and ample building setbacks. These improvements will include street trees, pedestrian scale streetlights, and benches. Streetscape will also be provided along the roads that border the site. An internal plaza will form an urban open space feature behind the buildings with frontage along Rockville Pike and allow pedestrians to freely cross through the site unimpeded by traffic obstacles.

Mr. Payton indicated that the site is within an area that is characterized by low-rise buildings and surface parking. However, the area also is developing with higher densities with buildings reaching 20 stories or more in height. This newer development follows master plan recommendations and includes several high-rise residential building west of Rockville Pike and office buildings east of Rockville Pike including three buildings at White Flint Place and the NRC building. Rockville Pike, the major traffic carrier and the front door for the proposed development, anchors the street network.

Mr. Payton testified that the master plan recommends mixed-use development at this location that will encourage Metro rider-ship and promote a 24-hour vitality. The proposal envisions 176,000 square feet of commercial space including offices, a grocery store, and 435 dwelling units. The proposed development includes uses and activities that go beyond the normal workday and include transit served residential development and a pedestrian environment.

Mr. Payton contended that flexibility is the key given the uncertainties of office and retail tenants and their needs. For this reason, the specifics of building height and commercial space will need to be deferred until the site plan stage. The binding elements provide that a minimum of 130,000 square feet of commercial space will be provided and unused commercial space may be converted to residential space.

Mr. Payton concluded that the proposal would be compatible with existing and planned uses in the surrounding area. The proposed building heights will be consistent with existing and planned building heights in this area. The overall density is also consistent with the density of nearby development. For example, the tallest building will be located along Rockville Pike and building height will be stepped down to no more than 6 stories along Woodglen Drive. The 24-story point tower compares very favorably to other tall buildings. For example NRC building contains 25,000 square feet per floor while the point tower would only contain 8,000 square feet. The nearest residential development, Fallstone, is separated by Woodglen Drive and substantial vegetative buffer and topography.

Mr. Payton stated that the proposed development meets the goals and objectives of the North Bethesda Garrett Park Master Plan and the White Flint Section Plan. This area is envisioned the main urban center for North Bethesda. The sector plan recommends mixed uses, offices, retail and residential uses close to the Metro station. The subject property is designated by the master plan for mixed use and high-density development. The development plan proposes office and residential uses within a finely grained street grid that provides pedestrian friendly streets with sidewalks and extensive streetscape. The proposal will result in the break up of a large block into a system of

smaller blocks that will provide for better traffic circulation alternatives to Rockville Pike.

Mr. Payton indicated that the master plan contains general concerns that apply throughout the planning area. Land uses and physical designs of the workplace have lead to the decline in mobility due the increasingly greater use of automobiles, low density design, non-integrated suburban office buildings, large surface parking areas and lack of affordable housing. The master plan and sector plan recommend the White Flint area as the main urban center of North Bethesda and emphasize the need for higher densities, mixed uses and affordable housing. The development plan responds to these concerns and recommendations with an innovative design, integration of mixed uses, concealed parking areas and MPDUs.

Mr. Payton testified that the proposal would enhance the pedestrian system by scaling the project vertically, that is, create more density closer to Metro. When people live and work closed to Metro they use cars less. The smaller blocks will provide for better distribution of traffic.

Mr. Payton concluded that the proposed development conforms to all the requirements of the zoning ordinance. The project meets the intent and purposes of the TS-M Zone as set out in §59-C-8.21. The project promotes the optimum use of Metro and the design layout allows people to easily move within the site. Amenities are provided that are not available under more conventional zoning. For example, the community urban plaza and pedestrians connections would not be available under conventional zoning. The street grid system allows people to come and go in a safe and

convenient manner. There are a variety of amenities that will be provided at the site plan stage.

Mr. Payton stated that the proposal also meets the location requirements of the TS-M Zone, §59-C-8.24. A transit station development area is required by the sector plan. The proposal provides a desirable pattern of land uses and is located within 1,500 feet of Metro. The development plan also meets other development standards of the TS-M Zone. The minimum area requirement of 40,000 square feet is exceeded by the 5.9-acre size of the property. The maximum density of 3.0 FAR is easily met with the proposal to limit density to the master plan recommendation of 2.0 FAR. Minimum open space of 10% is required and this requirement is satisfied with 19,000 square feet in the urban plaza. Passive recreational space of 25% is required and the 49,000 square feet of interior space provide that amount.

Mr. Payton concluded that the proposed development satisfies the findings required by §59-D-1.61. The proposal is in substantial compliance with the master plan and does not conflict with the general plan or other County plans or policies. Indeed, the proposal conforms to the County's Housing Policy with its MPDU element. The proposed development conforms to the standards of the TS-M Zone. According to the Technical Staff review the vehicular and pedestrian systems will be safe, adequate and efficient.

Mr. Payton finally concluded that there is adequate school capacity within the Walter Johnson cluster to service the proposed development as determined under Montgomery County Public Schools.

Mike Nicolaus, A.I.A. qualified as an expert witness in the fields of architecture and land planning. He has about 18 years of experience working in these fields. He designed to project to fit the site and relate in a compatible manner with the surrounding area identified by the Technical Staff. The proposed land uses were arranged to consider the nearby residential townhouse community and the influence of the Rockville Pike corridor. The placement of buildings, their densities and heights were carefully evaluated against topographic conditions, vehicular access, pedestrian connections, master plan recommendations and the requirements of the TS-M Zone.

Mr. Nicolaus described the development plan in some detail. The plan includes residential and retail components and these uses are arranged within a site that is divided into two smaller urban blocks, a western and eastern block, which is separated by Festival Street. The retail uses fill out ground floor space with 176,000 square feet of gross area. The residential uses are to be located above the retail uses. The western block will contain a 60,000 square foot grocery store operated by Whole Foods Market on the ground floor. Some small shops and a parking garage will also occupy this block. The parking garage will be bordered by the grocery store and residential uses so it will not be visible from Woodglen Drive. The binding elements of the development plan provide that the building height along Woodglen Drive will be limited to no more than 6 stories and the Applicant will at site plan structure residential portions of the project so they will mask visibility of parked cars from the street or nearby residential uses.

Mr. Nicolaus addressed the eastern block as composed of two story retail uses along Rockville Pike. The eastern block will contain a pedestrian plaza space and smaller shops, retail and restaurant space. The building façade along Rockville Pike will

reflect a mid-rise podium ranging from 4 to 7 stories and the point tower will be placed above the podium. The point tower represents a dramatic gateway to the White Flint district. The Rockville Pike buildings will introduce two-story retail at the base of the buildings. The point tower and the greatest densities will be closest to Metro. The eastern block facades and heights are intended to implement the master plan's vision for changing Rockville Pike into something like Michigan Avenue in Chicago or Wisconsin Avenue in Bethesda and the District of Columbia where a lively pedestrian character exists.

Mr. Nicolaus testified that the density of the project is designed to taper away from Rockville Pike. The buildings are arranged so that they are in proper scale with nearby buildings and insure compatibility and pedestrian friendly streetscape in and around the project.

Mr. Nicolaus was questioned about the proposed sidewalk width along Rockville Pike. The Applicant plans to dedicate right-of-way along Rockville Pike and provide a 25-foot wide sidewalk from the curb to the proposed buildings. The sidewalk width was discussed with the Technical Staff and it was concluded that the 25-foot width was adequate as consistent with sidewalks along Wisconsin Avenue in Bethesda and the District of Columbia. He acknowledged that the sector plan guidelines call for a 10-foot building setback from the Rockville Pike right-of-way that would provide a 35-foot wide sidewalk and a double row of street trees. He also acknowledged that the proposed 25-foot sidewalk width may be too narrow to permit the double row of street trees between the curb and the pedestrian walkway.

Mr. Nicolaus indicated that the project provides sufficient amenities to meet the requirements of the TS-M Zone for public use space and active and passive recreational space. The public use space requirement is 10% and the urban plaza contains 19,079 square feet of space that exceeds the requirement. Active and passive recreational space contains 47,698 square feet and is located in a combination of sidewalks, structures and pedestrians areas. For example, there will be rooftop courtyards, rooftop amenity space for residents and public amenity space within buildings. The total recreational space is 25%.

Mr. Nicolaus concluded that the dedication and construction of Executive Boulevard between Woodglen Drive and Rockville Pike is a significant amenity as it provides for pedestrian and vehicular access to Metro. Sidewalks and a bike trail will be located along this road that will provide for better distribution of traffic. Another important connection will be provided at the south edge of the site between the proposed buildings and the existing office building. This connection will be in the form of a private service drive that will have a right turn in and right out from Rockville Pike and Woodglen Drive. The service drive will provide two access points to the parking garage, the underground portion of which will be under the entire site. A third access point to the parking garage will be from Executive Boulevard. The service drive will provide substantial access to residents and shoppers. It will also allow deliveries to be made to retail stores and offices. Another amenity includes a reconstituted bike trail along Woodglen Drive.

Mr. Nicolaus testified that the proposed development was in substantial compliance with the master plan and sector plan. He also concluded that project satisfies

the development standards and requirements of the TS-M Zone. The development plan meets the requirements for density and amenity space. The proposed development will be compatible with existing and planned land uses in the surrounding area. The project is in the public interest because it would implement planning objectives for this location. The design of the project will tend to prevent soil erosion and protect any existing natural features or vegetation.

Kevin Johnson, P.E. qualified as an expert witness in the field of civil engineering. He has 22 years of experience in development projects throughout the region and, more specifically, worked on the engineering for the adjacent Wood Glen Park office development. He prepared the engineering analysis for the proposed development.

Mr. Johnson submitted a Natural Resources Inventory Forest Stand Delineation, which was approved by MNCPPC's Environmental Planning Division. The afforestation requirements can be met through the plantings that will be required as part of the streetscape and plantings in the urban plaza. A storm water management concept plan was approved for the front part of the site and the Department of Permitting Services is currently reviewing a proposal for the remainder of the site.

Mr. Johnson described availability of utilities to the site. All pertinent utilities are available. Water service is in category W-1 and the site enjoys current service. A 16-inch water line is under Rockville Pike and a 24-inch water line is under Woodglen Drive. There is also existing sewer service to the property, which is classified under category S-1. A sewer line is located under Rockville Pike. Gas and electric service are

available to the site. An existing closed storm drain system is located on Woodglen Drive, Rockville Pike and Security Lane.

Mr. Johnson concluded that approval of the proposed development would be in the public interest. The site was initially developed before storm water management regulations were adopted. The proposal will result in new and greater storm water management and will improve runoff. He noted that green roof technology is proposed as part of the applicant's engineering proposals. This technology will reduce the impact of the impervious nature of the site and improve upon the water quality of runoff. The applicant proposes to install underground structures and filtration that will provide water quality treatment. A detention and storage facility will be an improvement over existing runoff conditions. Sediment control plans provide for collection and filtration of run off during construction. In addition, the dedication and construction of Executive Boulevard will provide for expanded vehicular and pedestrian circulation in the area.

Mr. Johnson also concluded that the proposed development would not have an adverse impact on the environment. There are no environmental features or natural resources on the site. The project will add plantings, trees and landscaping to the site.

Mr. Johnson described the area roads. Rockville Pike is currently built within a 120-foot right-of-way or 60 feet from the centerline. The master plan calls for a 150-foot right-of-way. The applicant proposes to dedicate the additional 15 feet of right-of-way. The master plan calls for a 10-foot building setback from the right-of-way. There is a 25-foot swath from the existing curb to the master planned 75-foot right-of-way line. Woodglen Drive is currently at its master plan right-of-way although the Applicant plans to redevelop the streetscape with a 20-foot area between the curb and the right-of-way

line. Executive Boulevard is planned for an 80-foot right-of-way that the applicant will construct as part of the project. .

Mr. Johnson concluded that public utilities are adequate to support the proposed development. The storm water management plan is more than adequate and will be an improvement over the current system. Right-of-way dedications comply with the master plan. There will be no adverse impact from the proposed development in terms of storm drainage, storm water management or sediment control. The proposed design will prevent soil erosion and preserve natural vegetation and other natural features. The proposed landscaping will only enhance site conditions. The project will provide for the safety and convenience of residents and visitors to the project.

Craig Hedberg qualified as an expert witness in the field of transportation planning and traffic engineering. He prepared a transportation analysis of the proposed development, Ex. 43 (a), dated April 2005. He examined eight intersections, six of which are located in the White Flint Policy Area with a Critical Lane Volume (CLV) standard of 1,800, and the remaining two intersections in the North Bethesda Policy Area with a CLV standard of 1,550. The existing public streets include Rockville Pike, Executive Boulevard, Nicholson Lane, Woodglen Drive, Huff Court Security Lane, Edson Lane and Marinelli Road.

Mr. Hedberg performed a traffic study for the Wood Glen Commons subdivision, which was approved by the Planning Board for 118,000 square feet of retail and 112,000 square feet of office uses. This approval included part of the subject property and proposed to displace the existing 160-room motel and 15,000 square feet of retail space.

At the time of approval the Planning Board urged the extension of Executive Boulevard from Woodglen Drive to Rockville Pike.

Mr. Hedberg concluded that the proposed extension of Executive Boulevard, as called for by the master plan, constitutes a significant improvement to the area road network and the enhanced mobility of pedestrian circulation. The proposed development will function in a superior manner because of the road improvement. It will enhance the overall vehicular and pedestrian circulation of the area. It will permit traffic to avoid the congested intersection at Nicholson Lane and Rockville Pike and provide for alternatives routes. When added to the median strip improvements approved as part of the Wood Glen Commons subdivision, the safety of traffic circulation along Rockville Pike is significantly enhanced.

Mr. Hedberg's study used updated background traffic data, added projected trip generation rates of the proposed use and added these in an incremental fashion to the approved Wood Glen Commons subdivision. He found that all eight intersections will operate within the applicable CLV standards for levels of service and, therefore, the proposed development meets the requirement for an local area transportation review, See, Ex. 43 (a), Ex. 16, p. 27.

Mr. Hedberg provided some additional comments about traffic and pedestrian safety features of the proposed development. The bike trails will be enhanced and permit bikers to more easily reach Marinelli Road and the White Flint Metro Station. The smaller blocks and additional sidewalk space will increase pedestrian mobility. He concluded that all internal vehicular and pedestrian circulation systems are safe, adequate and efficient.

Mr. Hedberg concluded that the proposed development will not have an adverse impact on traffic or pedestrian movements and will actually improve circulation in the area. He also concluded that the proposal is consistent with the master plan in terms of providing road extensions recommended by the plan. He finally concluded that the proposed development is in the public interest.

B. Community Representative in Support.

John Fry is President of the Fallstone Homeowners Association, which represents the Townhouse community located west of the proposed development on the west side of Woodglen Drive. He expressed concerns about existing traffic conditions but supports the proposed development as a well thought out, attractive and appropriate use of the property.

Mr. Fry supports the extension of Executive Boulevard as a major improvement and supports the median strip improvements that will permit left hand turns from northbound traffic along Rockville Pike onto Executive Boulevard. He believes this turning movement will alleviate turning movements onto Edson Lane and Security Lane. He also supports the stacking lane in the median strip along southbound Rockville Pike to permit turning movements to Fitzgerald Auto World. This improvement will allow left turns and “U” turns to stack more safely than without the change.

C. Community Representatives in Opposition

Natalie Goldberg is a resident of Garrett Park Estates which is located southeast of the site and is the closest residential community to the proposed development on the east side of Rockville Pike. Rockville Pike is a major arterial road in one of the primary traffic corridors in Montgomery County. The proposed development will impact traffic

along Rockville Pike that will have a rippling effect to the north and south. There are many single family neighborhoods located between the Grosvenor and White Flint Metro stations that are dependent on access to Rockville Pike for general mobility. The needs of these communities should be considered.

Ms. Goldberg contended that the surrounding area should be expanded to include her community that has one of its access points by way of Flanders Avenue which is identified on the vicinity map as an unnamed street. Her community is clearly in the immediate vicinity of the proposed development and will be impacted by it.

Ms. Goldberg indicated that the traffic study is incorrectly limited to an evaluation of two signalized intersection in each direction from the site. She contends that Guidelines for LATR, Ex. 60, have not been properly applied here as the Applicant has understated the p.m. peak hour traffic that will likely be generated by the project. The result of the understatement relieves the applicant of the requirement of evaluating 3 signalized intersections from the site. She proceeded to demonstrate how the project would produce more than 750 p.m. peak hour trips that require a broader traffic study.

Mr. Goldberg used the Guidelines for LATR and the Applicant's traffic study, Ex. 43(a) to make calculations that show the true p.m. peak hour trips generated by the proposed development will be 1,030 trips including both the residential and commercial components. Ex. 62. She indicated that the use of only two signalized intersections under the Guidelines for LATR only apply when a development generates 749 trips or less, Ex. 60, Table 2, p. 13. The applicant used a rate derived from data based on general retail uses, Ex. 60, Table A-2, p. 42. However, the Guidelines for LATR contain more relevant data that includes a major food chain as proposed in this case, Ex. 60, Table B-2,

p. 49. She used data from this table to determine that the true p.m. peak hour impact of the proposed use will be 929 trips. She calculated the residential component to produce 101 trips for a total of 1,030 p.m. peak hour trips, which under the guidelines requires a traffic study to include 3 signalized intersections from the site, Ex. 60, p. 13. .

Ms. Goldberg agreed that the Applicant's proposed extension of Executive Boulevard to Rockville Pike has positive aspects. However, she criticized the Applicants proposals to facilitate turning movements at or near the intersection of Executive Boulevard and Rockville Pike. She noted that the future intersection would likely not be signalized because of the proximity of signalized intersections along Rockville Pike at Nicholson Lane and Security Lane. The Applicant has built in several unsafe turning movements into its traffic study with plans to modify the median strips along Rockville Pike. For example, encouraging northbound traffic along Rockville Pike to make a left turn at Executive Boulevard will lead to unsafe conditions. It would be better to encourage left turns at Edson Lane or Security Lane so traffic could proceed to Woodglenn and north to Executive Boulevard for a safer left turn. Also, the proposed new southbound U turn movement along Rockville Pike is hazardous. She concluded that these conditions are at odds with the TS-M Zone requirements that the zoning prevent detrimental effects in the area. See, §59-C-8.23 (f).

D. Public Agency Comment

The People's Counsel for Montgomery County, Martin Klauber, participated in the proceeding and played an instrumental role in the resolution of the issue of the building set back along Rockville Pike. He did not offer a recommendation for approval or disapproval of the application.

E. Applicant's Rebuttal

Craig Hedberg was recalled as an expert witness in the field of transportation planning and traffic engineering. He indicated that the number of primary trips associated with the proposed development determined the scope of his study. On the retail side, the development is evaluated by the gross leaseable area (GLA) which in this case is 208,000 square feet. The Guidelines for LATR provide that with a project over 200,000 square feet of GLA, the applicant may use a rate that is double the applicable Institute of Transportation Engineers (ITE) rate, Ex. 61, p. 32. The applicable ITE rate is for a shopping center and many shopping centers include food stores. The ITE rate was based on compilation of p.m. peak hour data from 407 studies, Ex. 63, which provide a graph of shopping center density versus trips generated from various densities in the p.m. peak hour. By doubling the ITE rate, the traffic study in this case captures the highest reported trip generation rates for a shopping center. The resulting rate was 1,560 p.m. peak hour trips, which is subject two discounts: one, for pass by trips; and, another determined by the Technical Staff to be 25% for a mixed use project. The existing hotel and retail uses are also factored into the calculation. The reductions and discounts resulted in a net figure for commercial uses of 529 p.m. peak hour trips. Finally, 194 residential trips are added provide a total of 723 p.m. peak hour trips.

Mr. Hedberg testified that his analysis is consistent with the Guidelines for LATR and the Technical Staff approved his methodology. He indicated that Ms. Goldberg brought this same issue before the Planning Board and the board supported his conclusions. He concluded that the scope of his study is accurate. Ms. Goldberg's

calculations are flawed because she did not consider 25% discount for the mixed-use project.

Mr. Hedberg indicated that the proposed left turns from Rockville Pike to Executive Boulevard could be made in a safe manner because of traffic gaps caused by the operation of the signal at the intersection of Nicholson Lane and Rockville. The State Highway Administration approved the left turn movement and did not perceive a safety problem. His traffic study shows that during a one-hour period, some 300 trips at the Nicholson Lane intersection will cause gaps in southbound traffic in enable an estimated 175 trips to safely execute a left turn onto Executive Boulevard. On cross examination, he was challenged about the 141 trips he identified in his report as making a right turn southbound on Rockville Pike at Nicholson Lane. He responded that while he cannot predict when within the peak hour these turns will be made, he accounted for the turns in his study and determined that 300 trips at that intersection will cause a gap to safely permit 300 left turns at the Executive Boulevard intersection. He concluded that since only 175 left hand turns are predicted, adequate capacity exists to permit safe turning movements.

Mr. Hedberg also testified that the southbound storage lane in the Rockville Pike median was the result of the Planning Board's approval of the Wood Glen Commons subdivision and was simply carried forward for purposes of his study in this case. The improvement is a condition of approval of the subdivision and it does not constitute a factor that impact whether or not the proposed development meets the CLV standards for traffic capacity. The proposed development would meet the CLV standards without the improvement considered in the traffic analysis.

V. ZONING ISSUES

The TS-M Zone is a special variety of floating zone that requires conformance with the zoning standards and a development plan that provides flexibility to encourage creative design but contains sufficient precision to fix the limits of the development in terms of land use, density and bulk.

A. Requirements of the Zone

The zoning standards for the transit station zones are found in §59-C-8.2. The relevant provisions are evaluated below.

1. Intent and Purpose

The intent and purposes of the TS-M Zone are found in §§59-C-8.21 and 8.23, and require that the zone be located in transit station development areas and where substantial commercial or office uses exist or are recommended by the master plan and will promote optimum use of transit facilities. The application satisfies these requirements.

The evidence indicates that the entire site is recommended for the TS-M Zone by the applicable master plan and is located within 1,500 feet of the White Flint Metro Station. The surrounding area reflects substantial commercial and office development and more is planned for the future. The proposal will promote optimum use of Metro.

The Opposition contends that the proposal fails to satisfy §59-C-8.23 (f) in that it fails to prevent detrimental impact and safety hazards because of proposed turning movements at or near the future intersection of Rockville Pike and Executive Boulevard. As the findings of fact indicate these movements will not be detrimental or unsafe. The Opposition's contention that the traffic study should be widened relies on a disagreement with the Planning Board and Technical Staff over the interpretation of the Guidelines for LATR. As indicated in the findings of fact, without evidence of arbitrariness, deference must be given to the Planning Board and Staff with respect to the application of these guidelines.

2. Location

Section 59-C-8.24 provides that the TS-M Zone is "...permitted only in the transit development areas" described in Section 59-A-2.1 and "in accordance with an approved and adopted master plan or sector plan...." The findings of fact indicate that the application satisfies these standards.

3. Public Facilities and Compatibility

Section 59-C-8.25 requires that a development must insure compatibility with the surrounding area and assure that public facilities in the area can accommodate the proposed uses. With the exception of traffic, the evidence is uncontested that the proposed development would be supported by adequate public facilities. With regard to traffic, the preponderance of evidence indicates that the road system can safely and adequately absorb the projected level of traffic within existing levels of service thresholds. The Applicant presented evidence to show that the traffic impact from the project will meet compatibility requirements.

The proposed development will be compatible with the existing and planned land uses in the area. The proposed maximum building heights are consistent with the building heights already established within TS-M Zoned areas to the north. The proposed building heights are tapered downward from Rockville Pike to conform with building heights of adjacent commercial and residential buildings. The evidence provides sufficient basis to conclude that in terms of land use, density and bulk, the proposed development will be compatible with its neighbors.

4. Development Standards

The proposed zoning meets the technical development standards of the TS-M Zone. Section 59-C-8.41 requires a minimum lot area of 40,000 square feet and the subject property contains almost six acres. The overall density of 2.29 FAR is well within the 3.0 FAR density limit of the TS-M Zone and the 2.4 FAR recommended by the master plan. As the findings of fact indicate the application meets the requirements for 10% of the site for public use space and 25% for active and passive recreational purposes.

B. Performance Specifications

The District Council must evaluate the development plan under five specific areas set forth in Section 59-D-1.61 of the Zoning Ordinance. The development plan plays a critical role in the evaluation of the proposed zoning because it provides the design features that govern all post-zoning reviews.

1. Compliance with the Use and Density Recommendations of the Master Plan and Conformity with Other County Plans and Policies

The TS-M Zone establishes the master plan as a performance factor. The entire site is recommended by the master plan for the TS-M Zone. The testimony of Messrs. Payton and Nicolaus, as well as the Technical Staff report, provide persuasive evidence that the proposed development satisfies all the master plan recommendations for this location. The proposed development achieves strict compliance with the master plan for a number of reasons.

As indicated by the Technical Staff analysis, the application is consistent with the land use and density recommendations of the plan. In terms of sector plan objectives for this location, the project will provide a main urban center for North Bethesda, encourage

significant Metro use, promote mixed-use development close of Metro to insure vitality of the area, provide transit serviceable residential uses, promote a lively pedestrian environment and provide significant affordable housing in the form of 66 MPDUs.

The application also meets the urban design and street circulation recommendations of the plan with a number of amenities including the extension of Executive Boulevard to Rockville Pike and an interconnected street grid that will enhance the distribution of vehicular and pedestrian traffic. It provides for improvement of the Woodglen Drive greenway corridor with the enhancement of the bike trail. It provides for public art and urban open space. It also provides a unique identity to the White Flint area through the location and scale of the landmark point tower and other buildings. The evidence also indicates that the proposed development is in accord with the County's other plans and policies.

2. Zoning Requirements, Residential Amenities, and Compatibility

The development plan provides for a form of development that satisfies the requirements of the TS-M Zone. The Applicant's evidence shows that plan also provides for the maximum safety, convenience and amenities for residents of the development as well as being compatible with adjacent development.

The development plan provides an imaginative and compact site design with compatible land uses and specifically implements the design guidelines of the sector plan. The development plan contains a transit serviceable residential component within a mixed-use project. The amenities include a new street grid to better distribute vehicular and pedestrian traffic, affordable housing, underground and structured parking, landscaping, community open space areas, building setback, public art and storm water

quality and quantity control facilities. These features extend benefits to future residents of the development and their neighbors.

3. Vehicular and Pedestrian Circulation Systems

The testimony of Mr. Hedberg as well as the Technical Staff analysis provides cumulative evidence to show that the internal vehicular and pedestrian circulation systems will be safe, adequate and efficient. The internal roads are designed to encourage safe and efficient distribution of traffic within mixed-use areas. This performance standard will be evaluated again at the site plan stage.

4. Prevention of Soil Erosion and Preservation of Natural Features of the Site

The site design will provide open space and landscaped areas. The plan minimizes grading and takes advantage of topography. The Applicant will use soil erosion and sediment control measures during construction. Mr. Johnson provided persuasive evidence that these efforts will prevent soil erosion, ensure sediment control and preserve natural features.

5. Perpetual Maintenance of Recreational, Common and Quasi- Public Areas

The Applicant provided evidence to assure perpetual maintenance of all recreational, common and quasi-public areas. The Planning Board will supervise this requirement at the site plan stage.

VI. CONCLUSIONS

Based on the foregoing analysis and after a thorough review of the entire record, I make the following conclusions:

A. Zoning Requirements

The TS-M Zone at the proposed location satisfies the zoning requirements in the following manner:

1. The proposed development is a proper use for the comprehensive and systematic development of the County
2. The proposed development is capable of accomplishing the purposes of the TS-M Zone;
3. The proposed development is in compliance with the applicable master plan; and
4. The proposed development satisfies all the technical requirements of the TS-M Zone.

B. Development Plan

The record also supports conclusions that:

1. The requested reclassification to the TS-M Zone specifically complies with the recommendations of the 1992 North Bethesda-Garrett Park Master Plan and does not conflict with the general plan, the County CIP or other County plans or policies;
2. The development plan complies with the purposes, standards and regulations of the TS-M Zone, and provides for the maximum safety, convenience, and amenities of the residents of the development, and will be compatible with adjacent development;

3. The development plan proposes vehicular and pedestrian circulation systems that are safe, adequate and efficient;

4. The development plan provides a site design that will prevent soil erosion and provides natural features for the site; and

5. The Applicant has provided sufficient documents for assuring perpetual maintenance and care for recreational, common and quasi-public areas.

VII. RECOMMENDATIONS

I recommend that Zoning Application No. G-830, which requests reclassification from the C-2 Zone to the TS-M Zone of 5.907 acres known as Lot 4, Higgins Estate Subdivision, located at 11401 Rockville Pike, North Bethesda in the 4th Election District be granted in the amount request and the development plan, submitted as Ex. 70 (b), be approved, provided, however, that within 10 days of receipt of the District Council's approval resolution, the Applicant must submit the approved development plan as a single document for certification in accordance with §59-D-1.64.

Dated: July 21, 2005

Respectfully submitted,

Philip J. Tierney
Hearing Examiner

